IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

C.R.No.5800 OF 2004
Date of decision : 22.9.2006

Varinder Singh .....Petitioner
versus
Satinder Dhillon .....Respondent

CORAM : HON'BLE MR. JUSTICE HEMANT GUPTA.

Present: Mr.K.S.Boparai, Advocate for the petitioner.
Mr.S.S.Brar, Advocate for the respondent.

ORDER

HEMANT GUPTA, J (Oral)

The plaintiff is in revision petition aggrieved against the order dated 18.9.2004, passed by the learned First Appellate Court, whereby the defendant has been permitted to prove the family settlement dated 6.9.1991 by way of additional evidence.

The plaintiff petitioner has filed a suit for possession wherein the defendant has taken a stand that there was an oral family settlement arrived at in the year 1989. Such family settlement was reduced in writing on 6.9.1991. It is the said settlement which is sought to be produced by way of additional evidence before the First Appellate Court. The learned First Appellate Court has found that such family settlement is the document to settle the controversy between the parties and is most material document to decide the appeal.

Learned counsel for the petitioner has vehemently argued that the defendant has not pleaded the agreement dated 6.9.1991 in the written statement. It was only pleaded that there was oral family settlement in the year 1989, therefore, the defendant cannot be permitted to lead additional evidence, moreso, in the first appeal. Learned counsel for the petitioner has

relied upon the judgment reported in "**2001 (1) PLJ-524, titled State of Rajasthan versus T.N.Sahani and others"** and this Court's judgment reported in **"2003 (1) RCR (Civil)-85, titled Municipal Committee, Ellenabad versus Shanti Devi"** and **"2003 (3) RCR (Civil)-584, titled Rajiv Kumar versus Bharat Parkash and others"** and "**A.I.R. 2005 (Punjab)-267, titled Gurnam Singh versus Saudagar Singh and others".**

To contend that the application for additional evidence is required to be decided alongwith the main appeal itself, the learned counsel for the petitioner has relied upon the judgments reported as "**2004 (2) R.C.R.(Civil)-702, titled Karnataka Board of Wakf versus Government of India and others", "2004 (2) RCR (Civil)-237, titled Ram Chand Premi versus Nawab Kaur", "2004 (4) R.C.R. (Civil)-472, titled Gurdial Singh and another versus Joga Singh".**

Learned counsel for the petitioner further contended that additional evidence cannot be permitted at mere asking, The same can be allowed only if it satisfies the pre requisite conditions contained under Order 41, Rule 27 CPC. Still further, the learned counsel for the petitioner relied upon **"1996 (2) Civil Court Cases-653, titled Subash Chander versus Prithpal Singh and another",** to allege that the additional evidence cannot be allowed to counter the ground taken in the appeal.

After hearing the learned counsel for the parties at some length, I do not find any illegality in the order passed by the First Appellate Court in permitting the defendant to lead an additional evidence in respect of family settlement dated 6.9.1991.

It is the case of the defendant that there was an oral family settlement in the year 1989 and that said defendant is owner in possession of

the land on the basis of Civil Court decree dated 7.12.1991. In appeal, the defendant has sought to produce such family settlement in respect of which a pleading has already been raised that there was an oral settlement in the year 1989. That decree, which is subject matter of challenge in the present suit, was passed on 7.12.1991 i.e. after the alleged family settlement is alleged to be reduced in writing on 6.9.1991. The said decree has been passed on the basis of an oral family settlement in the year 1989. The question, whether the term of family settlement was reduced in writing on 6.9.1991, is a question of fact which can be decided only after opportunity is given to the defendant to lead evidence. However, sequence of events prima-facie goes to prove that there could be a family settlement reduced in writing on 6.9.1991 as the suit on the family settlement was filed on 13.11.1991 soon after the family settlement. The learned First Appellate Court has found that it is most material document to decide the present appeal. The principles laid down in the judgments referred to by the learned counsel for the petitioner are not in dispute, but in the facts of the case, such judgments have no applicability.

Once the learned First Appellate Court has found that such document is relevant document which fact is not found to be without any basis, I do not find any ground to interfere in the finding recorded by the First Appellate Court, to exercise revisional jurisdiction under Section 227 of the Constitution of India.

Dismissed.

(HEMANT GUPTA)
JUDGE

September 22, 2006.
**mohinder*